CF0000059073

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Cr. Appeal No. 736 /92

Appellant ... Shyamlal alias Balram aged about s/o Bansilal aged about Residence of village Bisonghi Thana Lavkuga K.

Vs

Respondent . State of M.P.

APPEAL UNDER SECTION 374(1) OF THE CODE OF CRIMINAL PROCEDURE

CONVICTION	SENTENCE
U/s 302 I.P.C.	Life Imprisonment

A.E.R. (26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : Hon'ble Shri Fakhruddin, J. and
Hon'ble Shri Vijay Kumar Shrivastava, J.

Criminal Appeal No.736 of 1992

Shyamlal alias Boloram Orwan

Versus

State of M.P.

JUDGMENT FOR CONSIDERATION

Sd/-
V.K. Shrivatava
Judge

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Sd/-

HON'BLE SHRI FAKHRUDDIN, J.

Sd/-
Fakhruddin 21/12/2005
Judge

POST FOR 21-12-2005

Sd/-
Fakhruddin
Judge

(27)

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : Hon'ble Shri Fakhruddin, J. and
Hon'ble Shri Vijay Kumar Shrivastava, J.

Criminal Appeal No.736 of 1992

Appellant : **Shyamlal alias Boloram Orwan,**
S/o Budhuram Orwan, Resident of
Village Birsingha, Thana Lailunga

Versus

Respondent : **State of M.P.**

Smt. Indira Tripathi, counsel for the appellant.
Shri Ravindra Agrawal, Panel Lawyer for the respondent/State.

J U D G M E N T

(Delivered on 21-12-2005)

Per Vijay Kumar Shrivastava, J.

This is an appeal directed against the judgment of conviction and order of sentence passed by Sessions Judge, Raigarh on 26-5-1992 in Sessions Trial No.5/92, whereby the appellant has been held guilty for committing offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. The material facts for disposal of this appeal in brief compass are that, on 7-11-1991, the villagers were celebrating Diwali Festival. Bhatiram, the deceased and his brother Doyoram had consumed liquor and thereafter they were going towards the house of Bhatiram. On the way, Shyamlal and his brother Tejram met them, the appellant Shyamlal struck on the head of Bhatiram by a Dagger. Doyoram abstained him to assault, therefore, the appellant slapped him. Bhatiram received injury over his head, fell down and became unconscious. Doyoram reported the incident to Police. His report was recorded in Sanha and Bhatiram was referred for medical examination. Dr. Savendra Upadhyay examined Bhatiram and sent his injury report to the Police. Bhatiram was admitted to the hospital, who died on 9-11-1991. Death report was sent by the Medical Officer to Police Station.

3. Merg intimation was recorded and first information report was also registered. M.R.Kashyap, Sub-Inspector of Police investigated the crime. During the investigation, panchnama of dead body was prepared and dead body was sent for autopsy. Dr. Savendra Upadhyay conducted post mortem and opined that the death was caused due to coma resulted by head injury and nature of death was homicidal. Stained soil and controlled soil were recovered from the spot. On the basis of memorandum of the appellant, Sickle (Dagger) was recovered and seized from the possession of the appellant. Witnesses were examined. Opinion regarding causing injury by the Sickle was obtained. The Sickle, stained soil, controlled soil and Lungi of the deceased were sent for medical examination. Chemical Examiner, after examining the

articles, reported presence of blood over Lungi, Sickle and stained soil. After completion of the investigation, charge-sheet was led in the Court of Judicial Magistrate First Class, Gharghora, who committed the case to the Court of Session for trial.

4. Charge under Section 302 of the Indian Penal Code was framed, read over and explained to the appellant, who abjured the guilt. His defence was that, he has been falsely implicated in this case.

5. Learned Sessions Judge, after meticulous appreciation of the evidence, held the appellant guilty for committing the offence of murder punishable under Section 302 of the Indian Penal Code and accordingly sentenced him.

6. Dr. Savendra Upadhyay, P.W.-11, in his evidence, deposed that, on 8-11-1991, injured Bhatiram was brought for medical examination. He examined him and found one incised wound melted with clotted blood size 5 cms. x 2 cms. scalp deep over left frontal region caused by hard and sharp weapon. The injury was caused within 6 hours. The injured was unconscious. The injured was admitted to the hospital. The medical report given by Dr. Savendra Upadhyay, P.W.-11 is Ex.P-15. On 9-11-1991, he conducted post mortem of the deceased Bhatiram. On autopsy, he found one incised wound size 5 cms. x 2 cms. scalp deep over left frontal region. On internal examination, he found subdural hamatoma of brain and brain material compressed. The subdural hamatoma was dangerous for life. The injury was caused by hard and sharp object and in his opinion the cause of death was coma as

a result of the head injury. The death was homicidal in nature. His statement on material facts has not been challenged and is credible. From his evidence, it was proved that Bhatiram received one head injury caused by hard and sharp object. After receiving injury, he fell unconscious and was admitted to the hospital where he died as a result of the injury sustained by him over his head and accordingly it was proved that his death was homicidal in nature.

7. Doyoram, P.W.-1, Manakram, P.W.-2 and Sonmati, P.W.-3 have deposed that, the deceased and Doyoram were going towards the house of Doyoram. On the way, they saw Shyamlal and Tejram quarrelling. They asked, as to why they are quarrelling, therefore, Shyamlal assaulted the deceased Bhatiram with Sickle and caused injury over his head. Bhatiram fell down and became unconscious.

8. The contention of the appellant is that, the deceased received injury as a result of falling over stone, and to support his defence, the appellant also adduced witness Tejram. Tejram, D.W.-1 is real brother of the appellant, who, in his statement, deposed that Bhatiram was drunk, who fell down over stone and received the injury. His statement has rightly been disbelieved by the trial Court because no such injury caused by stone has been found on the body of the deceased. Apart from that, no specific defence has been taken during the cross-examination of the ocular witnesses.

9. Satyanarayan Singh, P.W.5, in his evidence, deposed that the appellant had admitted before him that he killed the deceased with Sickle.

10. In cross-examination of Doyoram, P.W.-1, Manakram, P.W.-2, Sonmati, P.W.-3 and Satyanarayan Singh, P.W.-5, nothing substantial has been brought so as to discredit their version.

11. Ex.P-1 is Sanha Report proved by Doyoram, P.W.-1 and M.R.Kashyap, P.W.-12. Doyoram, soon after the incident, lodged the report against the appellant and unveiled in his report Ex.P-1 that the appellant assaulted Bhatiram with a Sickle. Memorandum of the appellant is Ex.P-4 and recovery of the Sickle is Ex.P-5. Both these documents have been proved by M.R.Kashyap, P.W.-12. Sickle has been seized on the memorandum of the appellant from his possession, and Dr. Savendra Upadhyay, P.W.-11, after examination of the weapon, opined that the injury found on the head of the deceased could have been caused by this weapon. The seized Sickle has also been sent for chemical examination and chemical examiner in his report Ex.P-14 has reported that the Sickle is stained with blood.

12. From the aforesaid evidence, it was established that the head injury found on the body of the deceased Bhatiram was caused by the appellant with a deadly sharp edged weapon Sickle.

13. The appellant, relying on the decisions rendered by Hon'ble the Apex Court in the cases of **Ruli Ram and ànother vs. State of Haryana, reported in AIR 2002 SC 3360** and **Shivappa Buddappa Kolkar alias Buddappagol vs. State of Karnataka and others, reported in AIR 2004 SC 5047** and Chhattisgarh High Court in the cases of **Gopi alias Gopal vs. State of Chhattisgarh, reported in 2001 (2) CGLJ 440** and **Shiv Kumar Cherwa vs.**

State of C.G., reported in 2004 (2) CGLJ 119, contended that, the appellant, without premeditation, in whisper of moment, as a result of sudden fight, without any intention, struck over the head of Bhatiram by the Sickle, therefore, he is not guilty of murder but he is guilty of offence of homicidal death not amounting to murder punishable under Section 304 Part II of the Indian Penal Code. All the case laws referred by the appellant are distinguishable on facts from the instant case.

14. In the instant case, in cross-examination, Manakram, P.W.-2 clearly deposed that, the Sickle i.e. Article 'A' brought in the lower Court is the weapon used by the appellant to assault the deceased. He also categorically deposed that, when the deceased abstained the appellant, the appellant got annoyed, entered into his house and brought the Sickle. This statement itself clearly proves that this is not a case of want of premeditation or sudden quarrel with the deceased because there was no quarrel between the appellant and the deceased and the appellant did not strike the weapon in a whisper of moment over the head of the deceased but entered his house, took the Sickle from inside the house, came out of the house with plan and intention and caused injury on the head of the deceased.

15. The appellant also contended that Dr. Savendra Upadhyay, P.W.-11, in his statement and in his autopsy report, found the injury externally simple in nature. Therefore, neither intention to cause death nor knowledge to cause death can be inferred against the appellant. The contention has no force because the witness in his statement and in his report clearly described that

from appearance, the injury appears to be simple but on exploration it was found that the injury caused subdural hamatoma of brain which was dangerous to life.

16. Premeditation and intention have not to be inferred only on the external appearance of the injury but require to be considered on various factors like, gravity of injury, part of body where injury has been inflicted, weapon used etc. Here in the instant case, it is evident that, no quarrel took place between the appellant and the deceased. The appellant, on being questioned by the deceased, entered inside his house and came with a deadly weapon Dagger and gave a heavy blow with that Dagger over the head of the deceased, which ultimately proved to be fatal; and caused the death of the deceased. In these circumstances, neither the case falls under any of the exceptions enumerated under Section 300 of the I.P.C. nor it is a case of causing voluntarily simple injury to the victim.

17. In the result, we are of the opinion that, learned Sessions Judge, after meticulous appreciation of the evidence, rightly held the appellant guilty of committing murder of Bhatiram punishable under Section 302 of the Indian Penal Code and rightly sentenced him. The conviction and sentence passed by the trial Court is maintained. Accordingly, the appeal fails and is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
V.K. Shrivatava
Judge

G.Singh